IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

WRIT PETITION NO. 756 OF 2006

Fatmabai Binte Nakhuda Mohammed
Ameen Rogay Religious and Charitable
Trust and Ors. ...Petitioner

vs.

Shri S.M. Aga and anr. ....Respondents

P.M. Palshikar iby. Ashoka Law Firm
for the petitioner.

None for the respondents.

CORAM: S.U. KAMDAR, J.

DATED: 20TH MARCH,2006.

P.C. :

1. The present petition is challenging the order passed by the Industrial Court dated 14.7.2005 under MRTU complaint no.1104 of 2001. By the said order the petitioner is directed to make payment of legal dues to the respondent workmen of sum of Rs.2,40,426/- with

interest at the rate of 9% p.a. from 1.4.99 till realisation and cost of Rs.1000/-.

2. This impugned order has been challenged by the petitioner inter-alia contending that the respondent is not a workmen and as such the complaint preferred by him is not maintainable. It has been contended that infact the respondent no.6 was the Secretary appointed under Clause 15 of the Deed of settlement and therefore the complainant was not the workmen. The complainant in his evidence has deposed about the work carried out by him which was clerical in nature. In the said deposition he has deposed as under :

> " I entered into the service of Respondent No.1 as Secretary of the trust on the initial salary to the tune of Rs.150/-. I used to convey the meetings, used to record the minutes of the meeting, used to write proceeding, used to keep the account of the trust, used to the work of typing, used to

collect the rent from the tenants of the trust. I used to perform all sort of clerical work. My duties hours were 10 a.m. to 5 p.m. But I used to work beyond the said period also. I was to work on Saturday and Sundays also.

3. Learned counsel for the petitioner contends that the act of convening the meeting and recording the minutes as well as filing the application before the Charity Commissioner are all managerial functions and not clerical functions and therefore the respondent cannot be treated as workmen. In my opinion on the basis of the evidence which is on record the finding given by the trial court cannot be disputed. The petitioner has not produced any evidence to show that infact the work carried out by the respondent is of managerial nature. Thus the evidence of the petitioner is accepted as correct.

4. Thereafter it has been contended that there is no agreement between the parties to pay the legal dues

to the respondent workmen. However in so far as this issue is concerned the Trial Court has considered the fact that infact by Resolution No.7 of the meeting dated 25.12.1992 it was resolved that the respondent should be paid a lumpsum amount as if he has completed his full term of service and on the said assurance the petitioner continued to work. Thus the trial court has come to the conclusion that the liability of the petitioner to pay the lumpsum amount towards the legal dues on the basis that the petitioner has completed the service cannot be faulted with. However learned counsel for the petitioner contends that the resolution cannot be termed as an agreement or settlement and therefore the provision of Schedule IV Item 9 are not attracted. In my opinion there is no substance in the said contention. The agreement between the parties to pay the full amount has been formalised by passing necessary resolution in a meeting dated 25.12.1998 and therefore the aforesaid contention has no merits.

5. The last contention is about the quantum. In so far as quantum is concerned the Chartered

Accountant of the petitioner themselves have quantified the amount of Rs.5,41,597/-. Admittedly only Rs.3,37,171/- has been paid and thus the award is passed for making payment of the difference of the amount of Rs.2,04,426/- with interest at the rate of 9% p.a. The dispute raised inrespect of the quantum has also no substance because the petitioners themselves have computed the figure and accepted the same. Now it is not open for the petitioner to dispute the same. Inview thereof there is no merit in the petition. The same is accordingly dismissed. No order as to costs.

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